

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

Eastern Division

David B Smith

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-
OCM D. Redwood, J Byner
D. Deskins, Jennifer Black

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Case No. **1:23 CV 02154**

(to be filled in by the Clerk's Office)

FILED

JUDGE POLSTER

NOV 03 2023

MAG JUDGE ARMSTRONG

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

David D Smith

All other names by which
you have been known:

David M Smith

ID Number

A-691-563

Current Institution

Lucasville

Address

P.O. Box 45699

Lucasville Ohio 45699
City State Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

D. Redwood

Job or Title (*if known*)

OC M

Shield Number

Employer

State of Ohio

Address

2075 South avon Belden Rd
Drafton Ohio 44044
City State Zip Code

☒ Individual capacity ☐ Official capacity

Defendant No. 2

Name

J. Byner

Job or Title (*if known*)

Lt of R.I.B

Shield Number

Employer

State of Ohio

Address

2075 South avon Belden Rd
Drafton Ohio 44044
City State Zip Code

☒ Individual capacity ☐ Official capacity

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

Defendant No. 3

Name

Jennifer Black

Job or Title (if known)

Warden

Shield Number

Employer

State of Ohio

Address

2075 Southaven Belden Rd

Draffton

Ohio

44044

City

State

Zip Code



Individual capacity



Official capacity

Defendant No. 4

Name

D. Deskins

Job or Title (if known)

Investigator

Shield Number

Employer

State of Ohio

Address

2075 Southaven Belden Rd

Draffton

Ohio

44044

City

State

Zip Code



Individual capacity



Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

Federal officials (a *Bivens* claim)

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

14th Amendment Due process of Law

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

N/A

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

All 4 defendants was state employees and on the job as this was taken place.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

Lorain Correctional, at about 8:00 to 8:15 PM.
April, 16th 2023. Infirmary Restroom

C. What date and approximate time did the events giving rise to your claim(s) occur?

April 16, 2023 at about 8:00^{PM} to 8:15^{PM}

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

I was accused of Sexual assault, that never occurred at all. I was written up by OCM D. Woods and the Conduct Report was heard by J. Byner. No one witnessed this accusation. I was sent to HB, high Maximum.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

There was no physical Injuries

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

The ticket Taken off My Record. Compensatory damages, I lost Most of my Property. I was having health issues that brought on extra Care. The medicine, aggravation and disgrace. Punitive damages, The Reckless, Malicious act of doing this to me. In the amount to Proved at trial. Attorney fees

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Jordan Correction Institution

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☒ Yes

☐ No

☐ Do not know

If yes, which claim(s)?

The 14th and 15th claim. Eighth amendment

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

To the Warden Then to Legal at O.D.R.C

2. What did you claim in your grievance?

That I was denied witnesses and that it was written without any facts, no witness or documents

3. What was the result, if any? My First Appeal was denied, Then I appealed to the legal for O.D.R.C

The Conduct Report was Modified, At Legal

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

The R.I.B Must be appealed through The Warden first. There is no grievance process, it's non grievable.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

N/A

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

N/A

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

See Attach Notes

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

N/A

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) N/A

Defendant(s) _____

2. Court (if federal court, name the district; if state court, name the county and State)

N/A

3. Docket or index number

N/A

4. Name of Judge assigned to your case

N/A

5. Approximate date of filing lawsuit

N/A

6. Is the case still pending?

☐ Yes

☐ No

N/A

If no, give the approximate date of disposition. _____

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

N/A

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

N/A

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

☐ Yes

☐ No

n/A

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s)

Defendant(s)

n/A

2. Court (if federal court, name the district; if state court, name the county and State)

n/A

3. Docket or index number

n/A

4. Name of Judge assigned to your case

n/A

5. Approximate date of filing lawsuit

n/A

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

n/A

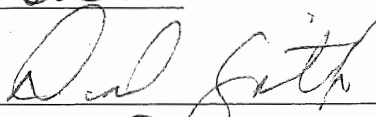
IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 10-26-2023

Signature of Plaintiff 

Printed Name of Plaintiff David Smith

Prison Identification # 691-563

Prison Address P.O. Box 45677 788

Louisville Ohio 45677

Manassas City State Zip Code

44901

B. For Attorneys

Date of signing: _____

Signature of Attorney _____

Printed Name of Attorney _____

Bar Number _____

Name of Law Firm _____

Address _____

_____ City State Zip Code

Telephone Number _____

E-mail Address _____

IV. Statement of Claim

On April 16, 2023, I was given a write up in violation of Ohio Administrative Code 5130-9-06-C(13). On April 17, 2016 subsequent to the write up, my level was raised to Level E, without any sort of hearing.

On April 16, 2023, offender Morris and I were conducting a conversation outside of Medical, where I was employed at the time. Offender Morris began speaking to me about drugs, and indicated he wanted to ask me something in private. I opened the restroom door and we both entered the restroom. Upon entering the restroom, Offender Morris offered to perform oral sex acts on myself. I began feeling uncomfortable with the conversation, and proceeded to change the subject back to drugs. Unsuccessful and uncomfortable with the conversation being held, I exited the restroom and continued about my job.

Once I began working again, I was told to go to the captain's office, and was escorted by a c.o.. I was immediately handed a statement form and was asked "what happened in the restroom?" I indicated to the captain that nothing happened, and was told to head back to my unit. About 30 minutes into being back at my unit, I was told to pack up and that I was being moved to segregation. Upon my arrival into segregation, a Lieutenant took every single one of my clothing items and indicated to me that I was there for non-consensual acts.

OCM D. Redwood was the lead investigator on the ticket and she came to speak with me on April 17, 2023 and conducted a conversation with me that was recorded. During that conversation Ms. Redwood repeatedly asked me if offender Morris "sucked my dick." I replied with "no" and she proceeded to ask me what happened and I told Ms. Redwood about the conversation I had with Morris in the restroom. Ms. Redwood proceeded to explain that the Ohio State Highway Patrol was coming to see me.

Ms. Redwood went around the institution and asked every transgender person to write a PREA against me, including individuals that I have never met, nor have met me. It is to my understanding that these PREA statements were labeled “confidential”. With the statements being labeled as “confidential”, I was unable to use the reports in the hearing. Not having known until after the hearing who made the claim, I was unable to properly defend myself during the hearing. I also have reason to believe that Ms. Redwood had given false information to Warden Ms. Black and Lieutenant Byner, the chairman of the Rules Infraction Board, in order to find me guilty. I then began a hunger strike.

On April 19, 2023 Lt. Byner called me into his office to discuss why I was on a hunger strike. I explained to him that I was being accused of something I did not do. Lt. Byner reassured me that he would look at the paperwork once he gets it from Ms. Redwood. I finally received a copy of the report on April 26, 2023, at this time I requested a hearing to include four (4) witnesses, including the evidence they had against me..

On May 3, 2023 I was taken to the Rules Infraction Board (R.I.B.), and was told that I was not allowed to have any witnesses, ask questions about the witnesses or see any evidence alleged against me. I was told that this was because no witnesses were there as well as Ms. Redwood. Those witnesses held valuable information that could have assisted in my hearing. The complaining witness should have been to give a statement or speak at my hearing, which should have helped in my hearing. This conduct report was written with no factual basis whatsoever.

I asked Lt. Byner why I was found guilty and he told me “that's what he was told to do,” and that it came from the warden and central office. He stated that Ms. Redwood's conduct

report, video footage, and me pleading not guilty to the charges were the evidence that they had against me, but that there was nothing to substantiate those claims.

Mr. Deskins, is the investigator who also investigated the charges, played a role in helping Ms. Redwood to find a way to lock me into this bogus conduct report. Mr. Deskins said that this should have been a consensual conduct report, but came into my cell the day before my R.I.B. hearing and told me that "they are gonna find you guilty." I asked him how he knew this information, and he said "because of the information from the testimony." I had not had a hearing yet. Mr. Deskins tried to get OSHP to take this case to the prosecutor, even after a sexual assault examination kit was completed and returned with negative results.

The warden Ms. Black was biased to the entire process, without any hesitation, she raised my level to a level E, without even a hearing, She handled all matters pertaining to classification. She was biased with her decisions from April 17, 2023 through May 19, 2023.

Ms. C. Miller handled the appeals process, but talked with me about the case and said that she would turn it over to the warden to give to someone else, but the warden handled it herself. Ms. Miller told me that she does not believe that this incident happened, but her "hands were tied" and she "did not want to get involved."

Sgt. Howard sat in on the R.I.B. cases that day, and he also did not believe that this incident had taken place, but said that this is what the warden wanted and that the warden is his boss.

Mr. Wright, the case manager came and officially did my status hearing on May 11, 2023, after already being raised to a Level E. This was my 48-hour notice. Mr Wright told me that this did not make any sense to him, and he had no clue why this was being done, but his boss told him to do so.

Ms. T. Costello is the Unit Manager Chief who stated that she did not think this was right, but this is what the warden told her to do. She mentioned that the complaining witness Mr. Morris stated that "I was going to kill him before I raped him." The warden told Ms. Costello to raise me to a Level E without any evidence to show this statement was true.

The Legal Department in Central Office modified the charges to a consensual act, in order to have the consensual act there has to be two (2) in this case, but in this case there is only 1 (one). I asked why I still had a conduct report and it was told to me that they cannot go back and change things.

This incident never took place. I am asking for this to be removed from my record and compensated for what was done to me.